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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,681	11/17/2000	Yoav Raz	EMS-00202	4765

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EXAMINER

DADA, BEEMNET W

ART UNIT PAPER NUMBER

2135

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/715,681

Applicant(s)

RAZ ET AL.

Examiner

Beemnet W. Dada

Art Unit

2135

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 22-28 and 41-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 22-28 and 41-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

AT

### **DETAILED ACTION**

1. This office action is in reply to an amendment filed on July 18, 2005. Claims 1-7, 22-28 and 41-52 are pending.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-7, 22-28 and 41-52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
4. Claims 1, 22 and 41 are directed to an antivirus method/unit/computer program product. The examiner respectfully asserts that the claimed subject matter does not fall within the statutory classes listed in 35 USC 101. Thus, while the claimed invention may be labeled as a method/unit/computer program product it is in fact functional descriptive material (i.e., computer program, see for example specification page 8, lines 6-9). Claims 1, 22 and 41 are rejected as being functional descriptive material (i.e., computer program). Claims 2-7, 23-28 and 42-52 depend on claims 1, 22 and 41 and are rejected under the same rationale.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 22-25, 41-44 and 46-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Waldin et al. (hereinafter referred to as Waldin) (U.S. Patent No. 6,094,731).

7. As per claim 1 and 41, , Waldin teaches a method of scanning a storage device for viruses, comprising:

determining physical portions of the storage device that have been modified since a previous virus scan using information about the physical portions without using information about a file structure, a file system, or a file type [column 2, lines 57-64 column 6, lines 37-47 and column 3, lines 5-45]; and

scanning at least parts of the physical portions for viruses, wherein scanning performed without using information about a file structure, a file system or a file type [column 6, lines 43-46 ,column 7, lines 37-46, column 3, lines 5-45].

8. As per claims 2 and 42, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein the physical portions correspond to tracks (sectors) of the storage device [column 4, lines 4-8 and figure 1].

9. As per claims 3 and 43, Waldin teaches teaches the method as applied above. Furthermore, Waldin teaches the method, wherein the physical portions correspond to sectors of the storage device [column 4, lines 4-8 and figure 1].

10. As per claims 4 and 44, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein the physical portions correspond to sub-portions of the storage device [column 4, lines 4-8 and figure 1].

11. As per claims 46, 51 and 52 Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein said means for coupling includes means for coupling to only one storage device [column 3, lines 47-55].

12. As per claims 47-50, Waldin teaches the method as applied above. Furthermore, Waldin teaches the method, wherein said means for coupling includes means for coupling to more than one storage device [column 8, lines 20-30].

13. As per claims 22-25, the claimed steps correspond to the functions of the elements of the method claims 1-4, which has been rejected above and thus rejected with the same reason applied thereto.

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 5-7, 26-28 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waldin et al. (U.S. Patent No. 6,094,731).

16. As per claims 5 and 45, Waldin teaches the method as applied above. Furthermore, Waldin teaches creating a table that is indexed according to each of the portions [fig 1, unit 10 and column 4, lines 4-8]. Waldin also teaches scanning for viruses when it has been determined that portions have been modified [column 4, lines 9-12], and calculating a new hash value upon determination of a modification [column 4, lines 58-60]. However Waldin does not explicitly teach setting a specific one of entries subject to a write operation. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a method of setting a specific one of entries subject to a write operation. This would have been obvious because Waldin teaches placing identification numbers into sectors that is scanned, every time a sector is read [column 4, lines 52-58]. Based on this teachings it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a method of setting a specific one of entries subject to a write operation into the indexed sector table thought by Waldin.

17. As per claims 6 and 7, Waldin teaches the method as applied to claim 5 above. Furthermore Waldin teaches method, wherein creating the table includes copying another table provided by the storage device [column 3, lines 50-55, figure 1, originating and recipient computers].

18. As per claims 26-28, the claimed steps correspond to the functions of the elements of the method claims 5-7, which has been rejected above and thus rejected with the same reason applied thereto.

### ***Response to Arguments***

19. Applicant's arguments filed July 18, 2005 have been fully considered but they are not persuasive. Applicant argues that Waldin operate on files and need information about files such as information about a file structure, a file system or a file type and fails to teach determining which physical portions of a storage device have been modified and scanning are performed without using information about file structure, a file type or a file system. Examiner disagrees.

Examiner would point out that Waldin teaches scanning for viruses without using information about a file type (see for example column 3, lines 5-45). It is true that Waldin uses information such as size of a file, however such information does not relate to a file type, a file system or a file structure according to Microsoft Computer dictionary definition of file type, file system and file structure.

### ***Conclusion***

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beemnet W. Dada whose telephone number is (571) 272-3847. The examiner can normally be reached on Monday - Friday (9:00 am - 5:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Y. Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

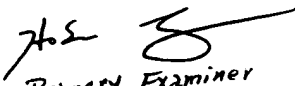
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Beemnet Dada

September 21, 2005

  
Primary Examiner  
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